

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**RICHARD J. LEES,**

**Plaintiff,**

**vs.**

**Case No. C2-06-984**

**Judge Edmund A. Sargus, Jr.**

**Magistrate Judge Mark R. Abel**

**THERMO ELECTRON CORP.,  
et al.,**

**Defendants.**

**ORDER**

On January 22, 2007, Defendants, Thermo Fisher Scientific, Inc. ("Thermo") and John Taulien, Robert Graessle and Jeff Schneider ("Individual Defendants") filed a partial Motion to Dismiss, Count One of Plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Defendants moved to dismiss Plaintiff's claim under the Age Discrimination in Employment Act ("ADEA") for failure to exhaust administrative remedies with respect to claims of discrimination as they relate to his former employer placing him on a second performance improvement plan and ultimately terminating him in October 2, 2006.<sup>1</sup> Defendants also moved for dismissal of Count One under the ADEA against the Individual Defendants for failure to state a claim upon which relief can be granted because the ADEA does not recognize individual liability

---

<sup>1</sup> Defendants did not contest that Plaintiff filed an administrative charge against Thermo with the Equal Employment Opportunity Commission on May 2, 2006 relating to claims of discrimination arising from a realignment of his sales territory, poor performance evaluation and placement on his first performance improvement plan. Thus, Defendants did not assert that Plaintiff failed to administratively exhaust this aspect of his claim under the ADEA.

for managers.

In his Memorandum in Opposition to the Motion, Plaintiff conceded that dismissal was proper as to his federal claim under the ADEA against the Individual Defendants, and emphasized that his cause of action against these individuals arises exclusively under Chapter 4112 of the Ohio Revised Code. Further, on May 31, 2007, Plaintiff stipulated that he has not asserted claims against the Individual Defendants under the ADEA but that he intended to pursue claims against them for discrimination and retaliation under Ohio's anti-discrimination statutes.

On March 16, 2007, Plaintiff moved to amend his Complaint to establish receipt of the right to sue letter related to his second charge with the EEOC in which he alleged retaliation and age discrimination with respect to matters occurring in October 2006. Without objection from Defendants, on April 16, 2007, the Court granted Plaintiff's Motion for Leave to Amend his Complaint.

Accordingly, Defendants' Motion to Dismiss (Doc. #6) is **DENIED AS MOOT**.

**IT IS SO ORDERED.**

6-25-2007  
**DATED**

  
**EDMUND A. SARGUS, JR.**  
**UNITED STATES DISTRICT JUDGE**